IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3081 OF 2006

Mrs. Sultana Akhlaq Qureshi ..Petitioner

Vs.

1. Dr. Adam Farooq Ahmed and anr. ..Respondents

Mr. S.R. Nargolkar for petitioner.
Mr. H. Toor with Mr. A.J. Uniyal for respondent nos.1 and 2.

CORAM: B.H. MARLAPALLE, J.

Date : August 11, 2006.

P.C.:

1. Heard Mr. Nargolkar the learned counsel for the petitioner-tenant. Application No.33 of 2005 came to be filed before the Competent Authority by the respondents-landlords on or about 27/10/2005 for eviction of the tenant, the present petitioner. It was contended by the landlords that the suit Flat No.1303, Sumer Park, Building No.1, Seth Motisha Cross Lane, Love Lane, Mazgaon, Mumbai - 400 027 was given to the petitioner on leave and license basis by an agreement dated 11/7/2004 and for a period of 11 months. The agreement was registered on 11/11/2004 and

the license period commenced from 13/7/2004 to 12/6/2005. The agreed monthly compensation was Rs.7,000/- and with a security deposit of Rs.90,000/- refundable. On expiry of the license period the landlords claimed to have issued a legal notice through their Advocate on 16/7/2005 after waiting for about a month for the tenant to hand over the vacant possession of the suit flat and finally the suit was filed. It was further argued that though the monthly compensation was agreed at the rate of Rs.7,000/-, for initial two months the compensation amount was paid and subsequently the tenant did not pay the compensation amount and the amount of arrears of compensation goes to Rs.63,000/- till 12/6/2005.

2. The tenant replied the Advocate’s notice on 13/8/2005 and claimed that by way of an oral agreement, the license period was extended by another two years i.e. upto 12/4/2007. Consequently, the landlords filed a police complaint and the tenant reportedly filed an undertaking that they would vacate the suit premises on or before 5/9/2005.

3. On 15/11/2005 the tenant appeared before the Competent Authority through her Constituted Attorney and applied for leave to defend on the grounds that the agreement for leave and license was extended by another two years by oral agreement and by the acts of the parties.

4. The Competent Authority, Konkan Division, Mumbai by his Judgment and Order dated 28/11/2005 held that, the applicants proved that they were the licensors and owners of the suit premises, the license period had expired and they were entitled to be put in possession of the suit flat, the prayer for leave to defend was disallowed and this order of the Competent Authority came to be challenged in Revision filed before the Additional Commissioner, Konkan Division, Mumbai and the Additional Commissioner, Konkan Division, Mumbai was pleased to reject the Revision Application on 21/3/2006. Hence this petition.

5. It was not disputed before the Competent Authority that the license period was from 13/7/2004 to 12/6/2005 and the agreed monthly compensation was

Rs.7,000/-, Advocate's noticed dated 16/7/2005 was also acknowledged and it was replied on 13/8/2005 taking the plea of an oral agreement. The Competent Authority noted that there was nothing pleaded regarding the alleged oral agreement except a mere word that there was an oral agreement. It was also not pointed out that if the tenant was paying compensation after the license period had expired on 12/6/2005. The Competent Authority while rejecting the prayer for leave to defend stated,

> ".....It is needless to state that for obtaining leave to defend the respondent has to show that there is triable issue of law or fact is involved in the matter. On careful consideration of facts and documents on record it no where appears to me that there is triable issue involved in the matter. Moreover Explanation (b) to section 24 sub-section (3) states that an agreement of license in writing shall be conclusive evidence of the facts stated therein. In present case admittedly there is written and

registered agreement."

. This view taken by the Competent Authority has been duly endorsed by the revisional authority below. Mr. Nargolkar the learned counsel for the petitioner relied upon the decisions in the case of Precision Steel & Engineering Works and anr. vs. Prem Deva Niranjan Deva Tayal [(1982) 3 SCC 270] and Inderjeet Kaur vs. Nirpal Singh [(2001) 1 SCC 706].

6. The law on the issue of leave to defend to be granted to the tenant in the suit for eviction is well settled and in the case of Santosh Kumar vs. Bhai Mool Singh **(AIR 1958 SC 321)**, their Lordships stated thus,

> "....When leave to defend is sought, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action....."

. This legal position has been reiterated by the Apex Court in the case of Charan Dass Duggal vs. Brahma Nand **[(1983) 1 SCC 301]** and in the case of Inderjeet Kaur (Supra).

7. In the instant case, beyond a mere statement that there was an oral agreement to extend the license period, nothing has been placed on record even by way of prima facie evidence that such an agreement was agreed upon. Mr. Nargolkar the learned counsel for the petitioner has referred to the statement of accounts of the Bank Account of the licensee and the said statement nowhere points out any remittance having been made to the landlords' account for the monthly compensation from the month of July 2005 onwards.

8. Thus, the view taken concurrently by both the authorities below cannot be termed as perverse or grossly erroneous so as to cause interference under the supervisory powers of this court under Article 227 of the Constitution. Both the authorities below have

duly considered the defence taken by the tenant and allowed the application for eviction as well as for payment of compensation from July 2005 onwards.

9. Hence, the petition fails at the threshold and the same is hereby rejected. Ad-interim order stands vacated.

10. Mr. Nargolkar the learned counsel for the petitioner submitted an oral application for stay to this order for a period of eight weeks so as to file an appeal. The oral application is hereby rejected.

(B.H. Marlapalle,J.)